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# OPEN MEETING COVER SHEET

## DRAFT PRELIMINARY ORDER

**MEETING DATE:** September 12, 2019

**DATE DELIVERED:** September 5, 2019

**AGENDA ITEM NO.:** 14

**CAPTION:** **Docket No. 49737; SOAH No. 473-19-6862**  
Application of Southwestern Electric Power  
Company for Certificate of Convenience  
and Necessity Authorization and Related  
Relief for the Acquisition of Wind  
Generation Facilities

**DESCRIPTION:** Draft Preliminary Order

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**Arthur C. D'Andrea**  
Commissioner

**Shelly Botkin**  
Commissioner

**John Paul Urban**  
Executive Director



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Governor

## *Public Utility Commission of Texas*

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TO: Chairman DeAnn T. Walker  
Commissioner Arthur C. D'Andrea  
Commissioner Shelly Botkin

All Parties of Record (*via electronic transmission*)

FROM: Alexander Scheifler AS  
Commission Advising

RE: *Application of Southwestern Electric Power Company for Certificate of Convenience and Necessity Authorization and Related Relief for the Acquisition of Wind Generation Facilities*, Docket No. 49737, SOAH Docket No. 473-19-6862, Draft Preliminary Order, September 12, 2019 Open Meeting, Item No. 14.

DATE: September 5, 2019

Please find enclosed the draft preliminary order filed by Commission Advising in the above-referenced docket. The Commission will consider this draft preliminary order at the September 12, 2019 open meeting. Parties shall not file responses or comments addressing this draft preliminary order.

Any modifications to the draft preliminary order that are proposed by one or more Commissioners will be filed simultaneously prior to the consideration of the matter at the September 12, 2019 open meeting.

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**PUC DOCKET NO. 49737**  
**SOAH DOCKET NO. 473-19-6862**

|                                    |          |                                  |
|------------------------------------|----------|----------------------------------|
| <b>APPLICATION OF SOUTHWESTERN</b> | <b>§</b> | <b>PUBLIC UTILITY COMMISSION</b> |
| <b>ELECTRIC POWER COMPANY FOR</b>  | <b>§</b> |                                  |
| <b>CERTIFICATE OF CONVENIENCE</b>  | <b>§</b> | <b>OF TEXAS</b>                  |
| <b>AND NECESSITY AUTHORIZATION</b> | <b>§</b> |                                  |
| <b>AND RELATED RELIEF FOR THE</b>  | <b>§</b> |                                  |
| <b>ACQUISITION OF WIND</b>         | <b>§</b> |                                  |
| <b>GENERATION FACILITIES</b>       | <b>§</b> |                                  |

**DRAFT PRELIMINARY ORDER**

Southwestern Electric Power Company (SWEPCO) filed an application to amend its certificate of convenience and necessity to acquire three wind generation facilities in Oklahoma. As part of its application, SWEPCO requests that production tax credits not fully used be included in a deferred tax asset for later ratemaking proceedings. This preliminary order identifies the issues that must be addressed.

SWEPCO seeks approval of its acquisition of an 810 megawatt share of three developing wind facilities in Oklahoma owned by affiliates of Invenergy.<sup>1</sup> SWEPCO would acquire 54.5% of each facility, and its affiliate Public Service Company of Oklahoma would acquire the remaining share.<sup>2</sup> SWEPCO has also filed with the Arkansas Public Service Commission and the Louisiana Public Service Commission.<sup>3</sup> If the state regulatory commission of either Arkansas or Louisiana does not approve the transaction, SWEPCO requests alternative approvals to proportionately reallocate the costs and benefits of the acquisition or to reduce its megawatt share of the facilities.<sup>4</sup> In addition, SWEPCO anticipates it will earn production tax credits greater than it can use in any given tax year.<sup>5</sup> SWEPCO seeks approval to include unrealized production tax credits in a deferred tax asset for future ratemaking proceedings.<sup>6</sup>

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<sup>1</sup> Application at 1 (July 15, 2019).

<sup>2</sup> *Id.*

<sup>3</sup> *Id.* at 3.

<sup>4</sup> *Id.* at 4.

<sup>5</sup> *Id.* at 5.

<sup>6</sup> *Id.*

SWEPO filed its application on July 15, 2019. This docket was referred to the State Office of Administrative Hearings (SOAH) on August 22, 2019. The Office of Public Utility Counsel, Texas Industrial Energy Consumers, East Texas Electric Cooperative and Northeast Texas Electric Cooperative, International Brotherhood of Electrical Workers Local Union 738, Golden Spread Electric Cooperative, and Cities Advocating Reasonable Deregulation (CARD) have filed motions to intervene.

SWEPCO was directed and Commission Staff and other interested persons were allowed to file a list of issues to be addressed in the docket and also identify any issues not to be addressed and any threshold legal or policy issues that should be addressed by August 29, 2019. SWEPCO, Commission Staff, and CARD timely filed a list of issues.

### **I. Issues to be Addressed**

The Commission must provide to the administrative law judge (ALJ) a list of issues or areas to be addressed in any proceeding referred to SOAH.<sup>7</sup> After reviewing the pleadings submitted by the parties, the Commission identifies the following issues that must be addressed in this docket:

#### **Certificate of Convenience and Necessity Issues**

1. Was notice provided in accordance with 16 TAC §§ 22.52 and 22.55, including all affidavits required to be submitted to the Commission?
2. Is this amendment of SWEPCO's certificate of convenience and necessity necessary for the service, accommodation, convenience, or safety of the public under PURA<sup>8</sup> § 37.056? When answering this issue, address the following issues:
  - a. the adequacy of the existing service;
    - i. Is SWEPCO currently providing adequate service?
  - b. the need for additional service;

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<sup>7</sup> Tex. Gov't Code § 2003.049(e).

<sup>8</sup> Public Utility Regulatory Act, Tex. Util. Code §§ 11.013-66.017 (PURA).

- i. Does SWEPCO contend that there is a need for additional capacity? If so, has SWEPCO demonstrated a need for the additional capacity? Is the acquisition of these wind facilities a prudent alternative to meet that need for additional capacity? What capacity additions would this acquisition defer? Does SWEPCO assume a reasonable net capacity factor?
  - ii. What pending or completed generation projects could reduce the necessity of this proposed acquisition?
  - iii. How much additional capacity does SWEPCO need to serve its retail customers, and when is that need anticipated?
  - iv. How much additional capacity does SWEPCO need to serve its wholesale customers, and when is that need anticipated?
  - v. What alternatives to these selected wind facilities were evaluated to satisfy any identified need for additional service? What assumptions and factors made the selected wind facilities the most appropriate choice?
  - vi. Was the purchase of capacity from a competitive generator evaluated?
- c. the effect of granting the certificate on SWEPCO, including its financial ratings, and on any electric utility serving the proximate area;
- i. How does SWEPCO propose to finance the transaction? What other approaches to financing the transaction were evaluated and how did any alternative approaches compare with the chosen method?
  - ii. What impact, if any, would the acquisition have on energy prices?
  - iii. What impact, if any, would the acquisition have on congestion charges or the need for a generation-tie line?
  - iv. What impact, if any, would the acquisition have on reliability-must-run designations of generation units?
  - v. What impact, if any, would the acquisition have on satisfying reserve requirements?

- vi. What impact, if any, would the acquisition have on costs for complying with recent and pending, proposed regulations on electric generation facilities by the United States Environmental Protection Agency?
  - d. other factors, such as:
    - i. environmental integrity. Will completion of the transaction change SWEPCO's plans related to retiring any other generation facilities or adding additional air-pollution abatement equipment? If so, how will SWEPCO's plans change?
    - ii. the probable improvement of service or lowering of cost to consumers in the area and in Texas if the certificate is granted. In addressing this issue, address how benefits of the production tax credits would flow to consumers.
3. Are any facilities not identified in the application necessary to ensure that power from the wind facilities can be used to serve consumers in Texas in a cost-effective manner? If so, are those facilities already constructed and currently in operation? If not, are the costs of any necessary additional facilities included in any cost-benefit study relevant to a public interest finding and when will those facilities be constructed and placed into operation? If so, how should these facts be considered by the Commission?
  4. How would development and ownership of the wind facilities improve the reliability of SWEPCO's service? Is the proposed transaction the most cost-effective alternative to achieve any improvement in reliability?
  5. Since deciding to enter into the transaction to acquire the wind facilities, has SWEPCO continued to evaluate whether this transaction is in the public interest?
  6. Are the final amounts related to the transaction currently known such that the Commission can evaluate whether it is in the public interest?
  7. From what other regulatory authorities must SWEPCO or a SWEPCO-affiliated company seek approval for the transaction? When were any such applications filed? Which regulatory authorities have approved the transaction? When are any approvals anticipated?
  8. If any other regulatory authorities, including the Federal Energy Regulatory Commission, do not approve the transaction, should development of the facilities and SWEPCO's acquisition

proceed? In that event, what are SWEPCO's alternative requests, and should the Commission approve them?

9. Will Invenergy complete the facility construction even if SWEPCO's acquisition of the facilities is not approved?
10. Has SWEPCO made any commitments related to the proposed transaction to any other regulatory authority? If so, what are those commitments, and would it be appropriate to condition any approvals in this docket on similar commitments?
11. Is SWEPCO in the process of implementing customer choice in its service territory? What effect, if any, would approval of the certificate of convenience and necessity have on the implementation of customer choice in SWEPCO's service territory, particularly on how the utility would mitigate market power and achieve full customer choice, including specific alternatives for construction of additional transmission facilities, auctioning rights to generation capacity, divesting generation capacity, or any other measure that is consistent with the public interest?<sup>9</sup> Would approval of the certificate create or increase any stranded costs? What actions can be taken to eliminate the creation of or minimize stranded costs?
12. Should the Commission grant a generation certificate of convenience and necessity for a rate-regulating utility, or should it require the utility to acquire any additional generation through a competitive affiliate? Should the answer to this question depend on whether generation is needed to serve native load or whether the generation is for economic purposes? What other factors, if any, should inform the Commission's answer to this question?

**Sale, Transfer, Merger Issues**

13. Does SWEPCO's proposal to acquire the selected wind facilities constitute a transaction to "sell, acquire, or lease a plant as an operating unit or system in this state for a total consideration of more than \$ 10 million" under PURA § 14.101(a)?
  - a. If PURA § 14.101(a) applies, has SWEPCO complied with the reporting requirements under PURA § 14.101 and 16 TAC § 25.74?

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<sup>9</sup> PURA § 39.402(c).

- b. If PURA § 14.101(a) does not apply, does SWEPCO's application nevertheless constitute "the filing of a report with the commission" under PURA § 14.101(b)?
14. What is the current ownership structure of the selected wind facilities? What will be the ownership structure after the proposed acquisition? How will the transition be structured?
15. What is the development status of the three selected wind facilities, and what role does SWEPCO have in their development?
16. What is the total estimated cost of the facilities?
  - a. Has Southwest Power Pool (SPP) conducted a facility study to determine the full cost of the project? If so, what is the result of that study?
  - b. From what source or methodology does SWEPCO forecast the price of natural gas to evaluate the economics of the project? What alternative forecast models did SWEPCO consider?
  - c. Was a future carbon tax assumed to predict the economic benefit of the project? If so, what burden was assumed?
  - d. Is the estimated cost reasonable for purposes of consideration under PURA § 14.101?
  - e. Does the total estimated cost for the acquisition exceed the total facilities in service minus accumulated depreciation of the acquired facilities? If so, by what amount?
17. What is the total estimated cost, if any, for additional facilities—such as, but not limited to, transmission facilities—necessary to ensure the wind facilities would serve Texas customers in a cost-effective manner?
18. Is SWEPCO's proposal to acquire the selected wind facilities consistent with the public interest under PURA § 14.101(b)? In addressing this issue, please cover the following factors:
  - a. What is the reasonable value of the property, facilities, and securities to be acquired, disposed of, merged, transferred, or consolidated, including any additional facilities—such as, but not limited to, transmission facilities—necessary to serve Texas customers?
  - b. Will the transaction adversely affect the health or safety of customers or employees?

- c. Will the transaction result in the transfer of jobs of Texas citizens to workers domiciled outside of the state?
- d. Will the transaction result in the decline of service?
- e. Will the public utility receive consideration equal to the reasonable value of the assets when it sells, leases, or transfers assets?

**Production Tax Credits**

- 19. Do the wind facilities qualify for a production tax credit?
  - a. What is the timing of receipt of the production tax credit?
  - b. Over what time period will SWEPCO be eligible for the production tax credit? How long can any unused production tax credits be carried forward?
- 20. How will the benefits of the production tax credits flow to customers? If through a generation investment recovery rider under PURA § 36.213, and if SWEPCO in the future applies for that rider, should the Commission approve SWEPCO's request for that rider? What additional information would be relevant to such a decision but is unavailable?
- 21. To the extent SWEPCO does not receive its predicted amount of production tax credits, how will SWEPCO ensure that ratepayers are kept harmless for the shortfall? What additional mechanism, if any, should be implemented if production tax credits are terminated?

**Cost Reconciliation and Deferred Tax Assets**

- 22. Should the Commission approve SWEPCO's request to create a deferred tax asset relating to unused production tax credits and include it in a future ratemaking proceeding? What would be the anticipated amount in this account and how much would it affect rates?
- 23. If approved, should there be a termination date for the inclusion of a deferred tax asset related to unused production tax credits in SWEPCO's invested capital balance?
- 24. What is the anticipated revenue stream from the sale of electricity from the wind facilities? If SWEPCO were to rely only on the revenue from sales, when would SWEPCO receive a return on its investment?

25. What guarantees to protect consumers does SWEPCO propose? What conditions, reporting requirements, or reviews, if any, should the Commission impose if it conditionally approves the proposed transaction?
- a. Should the Commission place a cap on capital costs, including but not limited to direct costs, overheads, contingency, and allowance for funds used during construction?
  - b. Should the Commission impose a production tax credit eligibility guarantee?
  - c. Should the Commission impose a minimum production guarantee? Is SWEPCO's proposed guarantee reasonable?

**Jurisdictional Allocation**

26. Should the Commission address the jurisdictional allocation methodology to be applied to the cost of the wind facilities? In answering this question, please address what authority, if any, that the SPP has to allocate the responsibility for costs or the right to receive revenues related to the project. Also address what authority, if any, that the SPP has to override a decision of this Commission regarding the costs that may be borne by or the revenue that may be attributed to Texas retail customers or Texas wholesale customers.
27. If the Commission should address the jurisdictional allocation methodology to be applied to the wind facilities, what is the appropriate jurisdictional allocation?

**Other Rate Issues**

28. Should the Commission determine in this docket whether the methodologies proposed by SWEPCO decrease its risks of recovering the costs of the project? If so, are SWEPCO's risks reduced?
29. If the Commission addresses whether SWEPCO's risks of recovering the costs of the project are reduced in this docket, should it also address any adjustments that would be appropriate to its return? If so, what is the appropriate adjustment?
30. If the Commission considers in this docket any rate-case or fuel-reconciliation-case related issues, what other rate-case-related or fuel-reconciliation-related issues should also be considered so that all attendant impacts are appropriately considered?

**Renewable-Energy Credits**

31. Should the Commission determine the appropriate treatment of sales of renewable-energy credits in this docket?
32. If so, what is the appropriate treatment of any sales of renewable-energy credits? Why is treatment as off-system sales more appropriate than as a non-fuel item?

This list of issues is not intended to be exhaustive. The parties and the ALJ are free to raise and address any issues relevant in this docket that they deem necessary, subject to any limitations imposed by the ALJ or by the Commission in future orders issued in this docket. The Commission may identify and provide to the ALJ in the future any additional issues or areas that must be addressed, as permitted under Tex. Gov't Code Ann. § 2003.049(e).

**II. Effect of Preliminary Order**

This order is preliminary in nature and is entered without prejudice to any party expressing views contrary to this order before the SOAH ALJ at hearing. The SOAH ALJ, upon his or her own motion or upon the motion of any party, may deviate from this order when circumstances dictate that it is reasonable to do so. Any ruling by the SOAH ALJ that deviates from this order may be appealed to the Commission. The Commission will not address whether this order should be modified except upon its own motion or the appeal of a SOAH ALJ's order. Furthermore, this order is not subject to motions for rehearing or reconsideration.

Signed at Austin, Texas the \_\_\_\_\_ day of \_\_\_\_\_ 2019.

**PUBLIC UTILITY COMMISSION OF TEXAS**

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**DEANN T. WALKER, CHAIRMAN**

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**ARTHUR C. D'ANDREA, COMMISSIONER**

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**SHELLY BOTKIN, COMMISSIONER**

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